

(b) of this section must make such a request, together with the reasons supporting the claim of confidentiality, simultaneously with the submission of material for the record.

**§ 280.623 Appeals.**

(a) *Grounds.* A party may appeal to the Under Secretary from an order disposing of a proceeding or an order denying a petition to set aside a default or a petition for reopening, on the grounds:

(1) That a necessary finding of fact is omitted, erroneous or unsupported by substantial evidence of record;

(2) That a necessary legal conclusion or finding is contrary to law;

(3) That prejudicial procedural error occurred; or

(4) That the decision or the extent of sanctions is arbitrary, capricious or an abuse of discretion. The appeal must specify the grounds on which the appeal is based and the provisions of the order from which the appeal is taken.

(b) *Filing of appeal.* An appeal from an order must be filed with the Office of the Under Secretary for Export Administration, Bureau of Export Administration, U.S. Department of Commerce, Room H-3898, 14th Street and Constitution Avenue, NW., Washington, DC 20230, within 30 days after service of the order appealed from. If the Under Secretary cannot act on an appeal for any reason, the Under Secretary will designate another Department of Commerce official to receive and act on the appeal.

(c) *Effect of appeal.* The filing of an appeal shall not stay the operation of any order, unless the order by its express terms so provides or unless the Under Secretary, upon application by a party and with opportunity for response, grants a stay.

(d) *Appeal procedure.* The Under Secretary normally will not hold hearings or entertain oral argument on appeals. A full written statement in support of the appeal must be filed with the appeal and be simultaneously served on all parties, who shall have 30 days from service to file a reply. At his/her discretion, the Under Secretary may accept new submissions, but will not ordinarily accept those submissions filed more than 30 days after the filing of

the reply to the appellant's first submission.

(e) *Decisions.* The decision will be in writing and will be accompanied by an order signed by the Under Secretary giving effect to the decision. The order may either dispose of the case by affirming, modifying or reversing the order of the administrative law judge or may refer the case back to the administrative law judge for further proceedings.

(f) *Delivery.* The final decision and implementing order shall be served on the parties and will be publicly available in accordance with § 280.622 of this part.

(g) *Judicial review.* The charged party may appeal the Under Secretary's written order within 30 days to the appropriate United States District Court pursuant to section 9(b)(3) of the Act (15 U.S.C. 5408(b)(3)) by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Chief Counsel for Export Administration, Room H-3839, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The findings and order of the Under Secretary shall be set aside by such court if they are found to be unsupported by substantial evidence, as provided in section 706(2) of title 5 United States Code.

**Subpart H—Recordal of Insignia**

**§ 280.700 Recorded insignia required prior to offer for sale.**

(a) Any manufacturer or private label distributor of a fastener must, prior to any sale or offer for sale of any fastener which is required by the standards and specifications by which it is manufactured to bear a raised or depressed insignia identifying its manufacturer or private label distributor, apply for and record an insignia to be applied to any fastener which is to be sold or offered for sale to ensure that each fastener may be traced to its manufacturer or private label distributor.

(b) The manufacturer's or private label distributor's insignia must be applied to any fastener which is sold or

offered for sale if such fastener is required by the standards and specification by which it is manufactured to bear a raised or depressed insignia identifying its manufacturer or private label distributor. If the fastener has no head, the insignia must be applied to another surface area in a legible manner.

(c) The insignia must be applied through a raised or depressed impression. The insignia must be readable with no greater than 10x magnification.

#### THE WRITTEN APPLICATION

##### **§ 280.710 Applications for insignia.**

(a) Each manufacturer or private label distributor must submit a written application for recordal of an insignia on the Fastener Insignia Register along with the prescribed fee. The application must be in a form prescribed by the Commissioner.

(b) The written application must be in the English language and must include the following:

- (1) The name of the applicant;
- (2) The address of the applicant;
- (3) The entity, domicile, and state of incorporation, if applicable, of the applicant;
- (4) Either:
  - (i) A request for recordal and issuance of a unique alphanumeric designation by the Commissioner, or
  - (ii) A request for recordal of a trademark, which is the subject of either a duly filed application or a registration for fasteners in the name of the applicant in the U.S. Patent and Trademark Office on the Principal Register, indicating the application serial number or registration number and accompanied by a copy of the drawing page of the application or a copy of the registration;
- (5) A statement that the applicant will comply with the applicable provisions of the Fastener Quality Act;
- (6) A statement that the person signing the application on behalf of the applicant has personal knowledge of the facts relevant to the application and that the person possesses the authority to act on behalf of the applicant;
- (7) A verification stating that the person signing declares under penalty

of perjury under the laws of the United States of America that the information and statements included in the application are true and correct; and

(8) The application fee.

(c) An applicant may designate only one registered trademark for recordal on the Fastener Insignia Register in a single application. The trademark application or registration which forms the basis for the fastener recordal must be in active status, that is a pending application or a registration which is not expired, abandoned or canceled, at the time of the application for recordal.

(d) Applications and other documents should be addressed to: Box Fastener, Commissioner of Patents and Trademarks, Washington DC 20231.

##### **§ 280.711 Review of the application.**

The Commissioner will review the application for compliance with § 280.710. If the application does not contain one or more of the elements required by § 280.710, the Commissioner will not issue a certificate of recordal, and will return the papers and fees. The Commissioner will notify the applicant of any defect in the application. Applications for recordal of an insignia may be re-submitted to the Commissioner at any time.

##### **§ 280.712 Certificate of recordal.**

If the application complies with the requirements of § 280.710, the Commissioner shall accept the application and issue a certificate of recordal. Such certificate shall be issued in the name of the United States of America, under the seal of the Patent and Trademark Office, and a record shall be kept in the Patent and Trademark Office. The certificate of recordal shall display the recorded insignia of the applicant, and state the name, address, legal entity and domicile of the applicant, as well as the date of issuance of such certificate.

##### **§ 280.713 Recordal of additional insignia.**

(a) A manufacturer or private label distributor to whom the Commissioner has issued an alphanumeric designation may apply for recordal of its